

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

HUI MINN LEE,)	
)	
Plaintiff,)	
)	
v.)	1:18CV1046
)	
MARKET AMERICA, INC.,)	
)	
Defendant.)	

ORDER

This court is considering Defendant Market America, Inc.'s ("Defendant") Motion for Summary Judgment. (Doc. 33.) In Plaintiff Hui Minn Lee's ("Plaintiff") response brief, (Doc. 36), she relies on the declaration of Qilin Cheng ("Cheng Declaration"). (Doc. 36-8.) Problematically, it appears to this court that Plaintiff failed to identify Cheng as a potential witness in accordance with Federal Rule of Civil Procedure 26.

If a party fails to provide information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless.

Fed. R. Civ. P. 37(c)(1). Cheng apparently attended a training led by Plaintiff prior to Plaintiff's termination, so Plaintiff should have been aware that Cheng was a potential witness since the beginning of this litigation. Defendant has not been

afforded the opportunity to depose Cheng, so the failure to identify Cheng as a potential witness does not appear to be substantially justified or harmless.

Defendant argues in its reply brief that this court should not consider the Cheng Declaration because of Plaintiff's failure to identify Cheng as a potential witness. (Doc. 40 at 5.) Although Defendant should have, in accordance with this district's local rules, filed a separate motion to strike the Cheng Declaration, see LR 7.3(a) ("Each motion shall be set out in a separate pleading."), Plaintiff has also failed to file a response to Defendant's argument to strike the Cheng Declaration.

To remedy any unfairness, Plaintiff may file a short supplemental memorandum responding solely to the argument raised in Defendant's reply brief—namely, that this court should strike the Cheng Declaration. If Plaintiff elects to file such a supplemental memorandum, it shall be no more than 2,000 words in length and must be submitted to this court on or before Wednesday, January 12, 2022. No responsive briefing to this supplemental memorandum will be permitted.

IT IS SO ORDERED.

This the 4th day of January, 2022.

William L. Ostrum, Jr.

United States District Judge